

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL082908)**

INTRODUCTION

On August 29, 2008, the Nevada Superintendent of Public Instruction received a complaint dated August 28, 2008, from a parent alleging violations in the special education program of a student with disabilities in the Clark County School District (CCSD). An investigation team was appointed to examine the allegation that school district staff failed to implement the behavior plan in the student's Individualized Educational Program (IEP) on the second day of the student's placement in a self-contained classroom for students with severe behavioral challenges.

COMPLAINT ISSUES

The allegations articulated in the complaint raised the following issues under the jurisdiction of the Nevada Department of Education (NDE):

Issue: Whether the CCSD complied with state requirements to implement the behavior plan in the student's IEP as soon as possible after it had been developed.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parent
- Principal
- Assistant principal
- Special education teacher
- Special education director, Southwest Regional Center
- Southwest regional coordinator

DOCUMENTS REVIEWED

The investigation team reviewed the following documents:

- Student's 7/16/08 IEP (IEP)
- Student's behavior plan
- Student's attendance records for the beginning of the 2008/2009 school year
- School calendar for the 2008/2009 school year

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- Federal Register, Vol. 64, No. 48, March 12, 1999, p. 12579.

FINDINGS OF FACT

This investigation involved an elementary school special education student with an emotional disturbance. A review of documents, as well as interviews with the parent, the principal, the assistant principal, the special education director for the southwest regional center, the southwest regional coordinator, and the special education teacher, revealed the following facts.

During the 2007/2008 school year the student was enrolled in a year-round school that did not have a specialized program for students with an emotional disturbance. During the 2007/2008 school year, the student's behaviors escalated significantly and an IEP meeting was scheduled to address these concerns.

The IEP meeting was conducted on July 16, 2008, to structure the student's placement through the remaining weeks of the summer until the student could be placed in a self-contained classroom in another school that operated on a nine-month calendar. The present levels of performance in the July 16, 2008, IEP indicate that the behaviors of the student directed at other students and staff included pushing, biting, screaming, spitting, tripping, using inappropriate language and finger gestures, throwing objects and preventing students from entering and exiting the classroom. In addition, at least one threat was made about returning to school with a shotgun and killing everyone. The July 16, 2008, IEP included a behavior plan to address the student's behaviors.

The July 16, 2008, IEP set forth three consecutive placements for the student. The first placement, from July 16, 2008, through July 25, 2008, was in a regular education and special education combination. The second placement from July 28, 2008, through August 8, 2008, was an alternative instructional arrangement placement in the student's home. The third placement beginning on August 25, 2008, and continuing for the remainder of the year, was at another school in a self-contained classroom designed specifically for students with severe behavioral challenges.

On August 12, 2008, when the student was registered in the new school, the parent advised the principal and the assistant principal of the need to read the student's IEP prior to the beginning of the school year. The parents advised the special education teacher on August 22, 2008, of the need to read the student's IEP prior to the beginning of school.

The 2008/2009 school year began on August 25, 2008. On August 26, 2008, there was a behavioral incident at the school that was not responded to in accordance with the behavior plan in the student's IEP. District staff reported that the teacher had not read the student's IEP prior to the behavioral incident and did not implement the behavior plan. The special education teacher reported that the confidential file did not arrive before the beginning of the school year and that she had not been aware that she could have accessed the student's IEP on Encore, the district's computer program that normally has IEPs accessible for review. District staff also reported that they had difficulty accessing the IEP on Encore when they attempted to do so following the behavioral incident.

Following the incident on August 26, 2008, the parents removed the student from school and decided to provide home schooling.

CONCLUSIONS OF LAW AND REASONS

Issue: Whether the CCSD complied with state requirements to implement the behavior plan in the student's IEP as soon as possible after it had been developed.

This complaint concerned an allegation that school district staff failed to implement the behavior plan in the student's IEP during an incident that occurred one day after the beginning of the 2008/2009 school year.

State regulations at NAC §388.281(6)(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the (IEP) committee." Further, state regulations at NAC §388.281(6)(e) state the program shall be implemented "as soon as possible after it is developed." Because the student's IEP in this instance set forth three consecutive placements over a period of approximately six weeks, state law required implementation of the behavior plan in the IEP in each of those placements as soon as possible.

The United States Department of Education's discussion in the previous IDEA regulations (1999) on the implementation of an IEP is instructive with regard to the interpretation of "as soon as possible" and permissible exceptions. The United States Department of Education indicated that "it may be appropriate to have a short delay of a week or two (e.g., (1) when the IEP meetings occur at the end of the school year or during the summer, and the IEP team determines that the child does not need special education and related services until the next school year begins); or (2) when there are circumstances that require a short delay in the provision of services (e.g., finding a qualified service provider, or making transportation arrangements for the child)" (Federal Register, Vol. 64, No. 48, March 12, 1999, p. 12579).

In this case, the IEP was revised on July 16, 2008, to address a number of behavior problems that were so significant as to require placement at the beginning of the 2008/2009 school year on another school campus in a self-contained classroom for students with severe behavioral challenges. Despite having nearly six weeks between July 16, 2008, and August 25, 2008, to ensure that the staff members in the self-contained classroom were prepared to implement the IEP and behavior plan on the first day of school, the student's IEP was not implemented on August 26, 2008, in response to a behavior incident.

While under certain circumstances, it may be appropriate to have a delay of a week or two in the provision of IEP services, the circumstances in this situation did not justify such a delay. It appears that the delay in implementing the IEP was related solely to the fact that the student's special education teacher had not received the student's confidential folder before the beginning of the school year, and was unaware that a copy of the IEP was available electronically. No additional steps were taken to obtain a copy of the student's IEP, even though based on this student's placement in a specialized self-contained program, the district had knowledge that his behavioral needs were unique and significant. Although the student's parent had advised the principal, the assistant principal, and the special education teacher of the importance of reading the student's IEP before the first day of school, it does not appear that reasonable steps were taken to ensure that the IEP was implemented as soon as possible, beginning on the first day of school.

Therefore, the investigation team concluded that CCSD violated state regulations when it failed to implement the behavior plan in the student's IEP as soon as possible after it had been developed.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective actions to address the violation found in this complaint investigation. Specifically, the district did not implement the student's IEP as soon as possible after it was developed.

Professional Development/Training

The CCSD must take the following corrective actions. Within 30 days of receipt of this report, the CCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must include a plan to review and revise, where necessary, site-level and district-level policies and procedures, and provide training to pertinent staff, administrators and teachers regarding state requirements to ensure that IEPs are implemented as soon as possible after they are developed, with very limited exceptions. The training must address steps to be taken by staff to ensure that IEPs are accessed and reviewed in a timely manner, in order to support IEP implementation, including providing training on accessing IEPs through Encore, or through other means, when confidential folders are not available prior to the first day of school.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.